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ABSTRACT

This paper investigates the extension of educational rights to girls, working class children, and the children of migrant workers in the Federal Republic of Germany (FRG). The first section discusses the theoretical basis of affirmative action in West Germany, legal provisions for attaining equality in education, and basic features of the West German educational system. Section II presents a legal overview of the right to education at the national and international levels. Although the German constitution does not contain an explicit "basic right to education," German policy is said to have been shaped by judicial interpretation, the influence of the United Nations Declaration of Human Rights, and the FRG's acceptance of the European Social Charter. Developments in German education, from 1960 to 1980, are outlined in Section III. Statistics are presented to document increased government expenditures to meet the growing demands of German students. Discussed next are problems surrounding the "numerus clausus," a system created to enable universities to deal with greater demand for higher education, and the recent creation of a quota system to cope with rising numbers of university applicants from developing countries. Section IV addresses the educational problems of migrant worker children, and describes related government policy. Finally, Section V summarizes efforts to date of the German government to provide equal educational opportunities, and calls for additional measures for the future. (KH)

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# THE RIGHT TO EDUCATION:

# THE CASE OF THE FEDERAL REPUBLIC OF GERMANY

by

Klaus Hufner

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# INTERNATIONAL PERSPECTIVES ON AFFIRMATIVE ACTION

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# THE RIGHT TO EDUCATION: THE CASE OF THE FEDERAL REPUBLIC OF GERMANY

Klaus Hufner

## I. Introduction

The notion of "affirmative action" can be defined in two ways: (1) in a broader sense, affirmative action includes all normative-political, legal, and economic-financial measures that are undertaken in order to assist an identifiable group in terms of differences with regard to social-class origin, sex, language, or ethnicity; (2) in a restricted version, affirmative action programs are specific legal measures directly or indirectly linked with financial assistance programs in order to help an identifiable group that is discriminated against.

Whereas the first type is of social policy importance for Western European countries that have a well-structured and organized multilevel state authority and permit a general welfare state policy, the second type is important and necessary for those states such as the United States that favor market-oriented mechanisms.

In more theoretical terms, two extremes can be distinguished: (1) the neoclassical world of a free market in which the ideology of the individual as the basic unit of action and ultimate source of value is of primary concern; and (2) the Leontief world of state planning in which the ideology of the state as the locus of organization and vehicle of societal development is of primary importance.

These two extremes are, of course, only ideal models that do not reflect reality. However, in all Western societies, a permanent competition between both ideologies can be observed: whereas the mainstream of American tradition and practice affirms the rights of the individual and, therefore, seeks to protect the individual against his/her own government, the Western European tradition thinks primarily in terms of obligations that compel governments to act positively for the enjoyment of basic rights as laid down in national and international legislations on human

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rights that commit national governments to achieve these benefits on behalf of individuals.

Given these differences, American-type affirmative action programs do not exist in the Federal Republic of Germany as a major type of social policy action. This does not mean, however, that similar social problems of discrimination do not exist in Germany; but the solution mechanisms to overcome specific types of discrimination differ considerably.

This paper is restricted to educational problems; it deals with the extent that the right to education is implemented for specific underprivileged groups in German society--for example, girls, children of workers' families, children of migrant workers.

Before dealing with the de jure and de facto aspects of the right to education in the Federal Republic of Germany, some brief remarks are necessary in order to explain the distribution of legal-integrative, political-administrative, economic-financial, and planning competences in education.

According to Articles 7 and 30 of the Grundgesetz (basic law), education in its entirety is to be placed under state supervision. The exercise of state responsibility falls, however, within the jurisdiction of the eleven Lander (states) of the Federal Republic of Germany. The "cultural sovereignty" of the Lander implies that they have the majority of educational competences in law-making, administration, finance, and planning. In order to avoid the development of completely different education systems at the Lander level, the Lander ministries established in 1949 a Standige Konferenz der Kultusminister der Lander (Permanent Conference of State Ministers of Culture; KMK) as a council for coordination that deals with issues such as length of compulsory education, entrance requirements, regulation of transfers, and examinations. In 1969, changes of the Grundgesetz increased the educational competences of the Bund (federal government). Before that date, the Bund had only legislative authority over the out-of-school part of vocational education; in addition to that, the Bund also had all the competences in the field of

foreign policy including foreign culture policy (the implementation of bilateral and multilateral treaties in this field imply, however, rather complicated procedures of cooperation between the Bund and the Lander). Since 1969, the Bund gained some additional competences: e.g., in the field of tertiary education dealing with the "overall patterns of law of higher education" as well as with the Gemeinschaftsaufgabe (joint task) "modernization and facilities of higher education." Furthermore, the change of the constitution offered possibilities of a joint educational planning policy between the Bund and the Lander. For that matter, the Bund-Lander-Kommission fur Bildungsplanung (BLK; Bund-Lander-Commission for Educational Planning) was founded in 1970. For the first time in the history of the Federal Republic of Germany, a national body became responsible for planning[1] the development of education at all levels, without, however, changing or even limiting the sovereign rights of the individual Lander with regard to their educational systems.

The basic structure of the German educational system, which is still characteristic today, was stabilized during the early 1960s. Compulsory education begins for all children at the age of six: for four years (in West Berlin, six years), they then attend a common Grundschule (primary school). Before the compulsory school age, the possibility of voluntary attendance at kindergartens exists. After four years of primary education, the pupils are distributed among three different types of secondary school. These different types of school last for different time periods and lead to different examination certificates that are, relatively closely, linked to admission credentials for different types of occupation. This implies that relatively important career decisions are to be made at the age of 10 or 11.

The major three components of secondary education are the following ones:

1. The Hauptschule of five compulsory years. This type of school leads to practical vocational training or to employment. Some Lander also offer a voluntary or compulsory 10th year of schooling; after its completion a Realschulabschluss may be obtained;

2. The Realschule of six years leads to a certificate that opens the way to commercial and technical occupations; and

3. The Gymnasium, which leads to the "Realschulabschluss" after 6 years and/or to the Abitur after 10 years of schooling; the Abitur is the entry qualification for admission to the institutions of higher education.

Pupils who leave the Hauptschule, Realschule, or Gymnasium must decide whether to take up a vocational training program in a full-time vocational school or in the dual system (a combination of "learning on the job" and attending a public part-time vocational school).[2] Today, the majority of those who obtained the Abitur (65 to 70 percent) enter the system of higher education immediately afterward.

With regard to enrollment figures in absolute and relative terms, important changes occurred in this basic structure between 1960 and 1980, which were partly due to dramatic demographic cycles and partly due to sharp increases in the demand for high school examination certificates (Abitur). This, in turn, can be explained partly as the results of deliberate educational reform measures (for some statistical information see Section III of this paper).

In 1964, Georg Picht provoked an intensive and broad public debate when he referred to the existence of a "German educational catastrophe."[3] He asked for educational opportunities for everyone within a modern industrial society. One year later, Ralf Dahrendorf published his programmatic book on education as a civil right[4] and claimed an active educational policy leading toward a "material quality of opportunity" for all citizens through major changes of the educational system in the Federal Republic of Germany. The formula "right to education" became a prime mover for intended educational as well as societal reforms in Germany.

In the field of education, these demands implied rather concrete proposals: besides increases of attendance ratios in Gymnasien and institutions of higher education, the introduction of new structures (e.g., the Gesamtschule [comprehensive school] at the secondary level and

the Gesamthochschule [comprehensive university] at the tertiary level), new programs of teacher training, improvements of adult/recurrent education, etc., were discussed. Before presenting and evaluating the results of these debates (cf. Section III), the legal implications of the right to education at the national and international level will be discussed in the following section.

## II. The Right to Education: A Legal Overview at the National and International Level.

Basic rights to education are guaranteed in the Grundgesetz as well as in some of the Lander constitutions. However, the Grundgesetz does not contain explicitly a "basic right to education"; the fathers of the Grundgesetz restricted themselves to the classical civil and political rights. But the Bundesverfassungsgericht (Federal Constitution Court) interpreted the Grundgesetz in connection with Article 3 (I) on the principle of general equality and with Articles 20 (I) and 28 (I) on the principle of the social state in such a way that they assumed different education and training specific basic rights.

Some Lander constitutions deal explicitly with basic rights to education, namely, the constitutions of Baden-Wurttemberg, Bayern, Bremen, Nordrhein-Westfalen, and Rheinland-Pfalz. Article 2 (I) of the Baden-Wurttemberg constitution states that every young person has--regardless of his/her social background or economic situation--the right to education and training corresponding to his/her abilities.

In addition to the Grundgesetz and the Lander constitutions many other inner-state legal sources exist in the Federal Republic of Germany which can be interpreted as implementation laws of the Grundgesetz and which offer concrete measures. Furthermore, the Federal Republic of Germany became party to several international conventions that contain the right to education as a human right.

On December 10, 1948, the UN General Assembly adopted the Universal Declaration of Human Rights. Article 26 (I) proclaims that "everyone has the right to education. Education shall be free, at least in the

elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be equally accessible to all on the basis of merit." Although the Universal Declaration is not, as such, a legally binding document, it has exercised a powerful influence both at the international and national level.

On December 16, 1966, the UN General Assembly adopted the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, together with the Optional Protocol to the Covenant on Civil and Political Rights.[5] These two Covenants are legally binding treaties.

Article 13 of the first of the above-mentioned Covenants is wholly devoted to the right to education, and the opening paragraph is of particular importance:

> 1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all social, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

On December 14, 1960, the UNESCO General Conference adopted the Convention Against Discrimination in Education and a Recommendation containing similar substantive provisions.[6] The UNESCO Convention restates two principles of the Universal Declaration, namely, the prohibition of any kind of discrimination[7] (Article 2) and everyone's right to education (Article 26). The purpose of the UNESCO Convention is, therefore, not only to eradicate all forms of discrimination but also to ensure steps toward increasing equality of educational opportunity and treatment.

Article 1 of the convention states that:

> The term "discrimination" includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:

(a) of depriving any person or group of persons of access to education of any type or at any level;
(b) of limiting any person or group of persons to education of an inferior standard;
(c) subject to the provisions of Article 2 of this convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or
(d) of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.

To enable UNESCO to determine the extent to which its member states apply the Convention, it stipulates that the states should submit periodic reports. These are examined in accordance with the procedure established in 1965 by the Executive Board of UNESCO. Besides this, in 1962, the UNESCO General Conference adopted a protocol instituting a Conciliation and Good Offices Commission responsible for seeking the settlement of any disputes that may arise between states parties to the above-mentioned Convention Against Discrimination in Education. This protocol became effective as of October 24, 1968.

At the Western European level, the members of the Council of Europe --including the Federal Republic of Germany--adopted on November 4, 1950, the Convention of the Protection of Human Rights and Fundamental Freedoms.

The original text contained no provisions concerning the right to education, but the First Protocol to the Convention established in Article 2 that "no person shall be denied the right to education. In the exercise of any function which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

The child's right to education is reaffirmed in Article 7 of the European Social Charter, which came into force on February 26, 1965. The Federal Republic of Germany accepted, inter alia, that no young person to be employed in work should be deprived of compulsory education.

## III. Developments in German Education, 1960-80

Before dealing with some specific issues of equal educational opportunity, some general statistical figures about the educational development

in the Federal Republic of Germany over the last two decades should be mentioned.[8]

The overall figure of kindergarten places increased from 0.817 million in 1960 to 1.391 million in 1979;

The number of pupils at Gymnasien increased from 0.642 million in 1960 to 1.544 in 1980;

During the 1970s, all Lander set up Gesamtschulen (most of them for experimental purposes): in 1980, Germany had a total of 255 Gesamtschulen (as compared with 2,477 Gymnasien); in the same year 16,800 pupils were at Gesamtschulen of the secondary level II;

In 1980, 50.4 percent of all pupils at Gymnasien were girls, as compared with 41.1 percent in 1960;

Looking upon the proportion of girls at Gymnasien of the secondary level II, the share increased from 36.5 percent in 1960 to 49.2 percent in 1980;

Between 1972 and 1980, the number of pupils per teacher decreased from 26.6 to 21.9 for all institutions of primary and secondary education, from 34.3 to 25.2 in primary schools, and from 45 to 34 in vocational schools;

Public expenditures per pupil increased between 1965 and 1980 from 1,100 to 3,700 German marks (DM) for all institutions;

In 1980, the average expenditures per pupil were at the primary schools and Hauptschulen 3,330 DM, at the Realschulen 2,910 DM, at the Gymnasien 4,260 DM, and at the vocational schools 2,360 DM;

Overall educational expenditures, measured as a proportion of all public expenditures, increased 11.3 percent in 1965 to 15.2 percent in 1980;

Enrollment ratios (percentage of the average of the 19- to under-21-year-old population) of all first-year students in higher education increased from 7.9 percent in 1960 to 19.4 percent in 1980; and

The corresponding enrollment ratios of female first-year students increased from 4.4 to 16.0 percent during that period.

All these figures indicate dramatic changes in the social demand for education. Although detailed empirical evidence is not available, it can be stated that the increases in the social demand for education can be partly explained by "push" factors on behalf of the individual house-

holds and partly by "pull" factors of an open door policy of the Lander governments that provided additional institutions and places in their systems of education. The equality-of-educational-opportunity argument as well as the investment-in-human-capital argument worked together and made these changes possible during a period of a flourishing economy with high rates of economic growth. The impact upon the educational system can be illustrated by the changes in enrollment ratios of 13-year-olds between 1960 and 1980. In 1960, about 70 percent of all pupils attended Hauptschulen (and primary schools), about 15 percent Gymnasien, and 12 percent Realschulen. In 1980, the corresponding figures were about 39, 28, and 26 percent. By 1980, discrimination against girls in secondary education had practically ended, although in higher education, female students were still somewhat underrepresented.

Whereas in the early 1960s the three-level system strongly discriminated against pupils from socially disadvantaged families, especially against children of workers and those from rural areas, the 1970s showed visible progress, although the higher social classes still maintained much of their initial advantage. Looking upon pupils between 13 and 14 years according to their social background, the following changes occurred between 1972 and 1980 (cf. table 1):

In 1972, out of 100 children aged 13-14 from workers' families, 76 went to Hauptschulen, 17 to Realschulen, and only about 6 to Gymnasien. In 1980, the corresponding figures were 62, 23, and 10.

In the case of officials, the percentage of all children in that age group attending Hauptschulen further decreased from 30 to about 20 percent between 1972 and 1980, whereas in 1980 more than 51 percent of all children from officials went to Gymnasien. In 1980, almost two-thirds of workers' children attended Hauptschulen and only one-third of them went to Gymnasien.

In higher education, the proportion of first-year students coming from workers' families increased from about 8 percent in 1967 to about 13 percent in 1979. Again, it should be stressed that--despite the indicated progress--students of workers are still highly underrepresented, although

Table 1

Pupils Aged 13 and 14 According to School Type and Occupational Status of Head of Family, 1972 and 1980

| School Type | Total | Occupational Status of Head of Family: Self-employed, incl. family business | Officials | Salaried Employees | Workers | Others |
|---|---|---|---|---|---|---|
| | | % of the age group | | | | |
| | 1972 | | | | | |
| Hauptschulen[1] | 60.1 | 51.3 | 29.6 | 37.3 | 76.4 | 70.3 |
| Realschulen | 19.9 | 23.1 | 23.2 | 25.4 | 17.1 | 13.1 |
| Gymnasien | 20.1 | 25.6 | 47.2 | 37.3 | 6.5 | 16.6 |
| Total | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| | 1980 | | | | | |
| Hauptschulen[1] | 45.7 | 39.8 | 20.5 | 25.5 | 62.4 | 61.7 |
| Realschulen | 25.5 | 28.9 | 25.0 | 30.5 | 22.7 | 18.7 |
| Gymnasien | 24.3 | 28.2 | 51.1 | 39.4 | 10.0 | 15.0 |
| Comprehensive schools | 4.4 | 3.1 | 3.4 | 4.6 | 4.9 | 4.7 |
| Total | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |

Source: Statistisches Bundesamt (unpublished material of the microcensus).

[1] Including schools for the handicapped.

corrective measures, especially in terms of financial assistance (which will be discussed in section V), were undertaken.

All the information given so far refers only to German pupils and students. The discussion about education as a civil right in the late 1960s and 1970s did not refer to ethnic differences in the equality of educational opportunity. The specific problems of children of migrant workers, which will be treated in detail in section IV, became "visible" in the late 1970s. But the available information about differences of educational access and success between German and non-German groups in secondary education is still extremely limited. More detailed studies concerning these issues are to be expected during the early 1980s.

Finally, two issues should be discussed that are related to equality of access to higher education in Germany. One refers to the problem of the numerus clausus, the other to the quota system for foreign students.

Both problems cannot be understood without a basic knowledge of the organization of higher education in the Federal Republic of Germany. Since the system of higher education is a state system, administrative measures are necessary in order to regulate it. Basically, those measures are functional equivalents for "prices" in market systems. If, for example, the private demand for higher education in general or for specific types of it is higher than the supply, the "price" for it will increase. In the United States, the price mechanism works, inter alia, quite well via tuition fees; in Germany, where students do not have to pay any study fees, only administrative measures can replace the price mechanism.

Since, due to the overall educational expansion, the universities were unable to meet the individual demand for higher education with regard to all fields of study, a general numerus clausus was introduced in the fields of medicine, dentistry, veterinary medicine, and pharmacy. Those who qualified but could not be accepted were put on a waiting list whereby, besides the student's average grade of the final examination (Abitur), other factors such as military service and residence in the same Land in which the university is located were taken into account.

In the early 1970s, the constitutionality of the application of the numerus clausus was questioned when individual students went to the administrative courts of their Lander. Two of them referred the cases to the Federal Constitution Court (Bundesverfassungsgericht) for its opinion.

On July 18, 1972, the Bundesverfassungsgericht announced its decision: in the two special cases, the applicants were to be admitted to the medical schools of the University of Hamburg and of the University of Munich for the following reasons:

(a) The University of Hamburg failed to list the kind of criteria to be used in order to determine the acceptance of applicants; and

(b) In the case against the University of Munich, Article 3(2) of the Bavarian Admission Law was unconstitutional because it discriminated against residents of the other Lander of the Federal Republic of Germany.

The decision of the Bundesverfassungsgericht was made on the basis of Article 12 (1) of the Grundgesetz, which guarantees to all Germans "the right to freely choose their trade or profession, their place of work and their place of training." However, the numerus clausus, although inherently unconstitutional, was seen permissible only if the university applying it could demonstrate that all places in the department in question were completely filled.

As a result of this decision, the administrative procedures were further developed in terms of a capacity ordinance on the basis of curricular norms and a central office of university admissions; furthermore, special tests were developed in order to assess those qualities necessary for a given profession, e.g., a physician (for further details see Merritt, pp. 12 ff.). Undoubtedly, the teaching capacity increased in such fields in which the numerus clausus had been invoked; nevertheless in some fields, such as medicine, dentistry, and veterinary medicine, the number of applicants remained higher than the number of places available. Given the high birth rates of the 1960s and the increases of the individual demand for higher education on one side and the cuts of public budgets devoted to higher education on the other, a further sharpening of the situation can be anticipated for the middle of the 1980s.

In the case of foreign students, a quota system has been introduced and administered by the central office of university admissions. In general, 8 percent of all places for first-year students are reserved for foreigners. In the numerus clausus fields of medicine, dentistry, veterinary medicine, and pharmacy, this quota has been reduced to 6 percent. Furthermore, it has been decided that no more than 25 percent of all students should belong to the same nationality. In 1980-81, about 5.5 percent of the total student population were foreigners. About 60 percent of them came from developing countries, 40 percent from industrialized countries.

Among the foreign students who stay in Germany for a full study program, about 90 percent come from developing countries. The German authorities claim that absolute number of foreign students (in 1980-81 about 58,000) should be kept, which might lead to a visible decrease of their share in the total student population, when the high birth cohorts enter the higher-education system.

The major problem is the increase of applicants from developing countries. Compared with other Western industrialized countries, Germany does not ask for study fees. In Great Britain, e.g., foreigners outside the European Communities must pay 2,000 pounds per year in the humanities, 3,000 pounds per year in the sciences, and 5,000 pounds per year in medicine; in Belgium, foreigners have to pay fees that are 50 percent higher than for nationals.

Here again, the German authorities decided in favor of administrative measures, although even within a primarily state-administered system, "prices" such as fees could be used for allocation purposes.

Besides this overall policy, specific measures will be necessary in order to assist foreign students in Germany. At present, the drop-out rate is overproportionately high and the average duration of study relatively long. Furthermore, the "brain drain" phenomenon must be reduced. Meanwhile, the federal government offered financial assistance to pilot projects, but the initiatives at the Lander and university level are still relatively modest.

A problem that will confront the educational administrators in the very near future has been already recognized but remained so far unsolved, namely, the question of how the children of migrant workers should be treated within the current admission procedures. Two groups can be distinguished: (a) those applicants who received their education in Germany and in their countries of origin and (b) those applicants who attended school only in the Federal Republic of Germany. In the case of the second group, the question remains to be answered whether the Abiturienten of foreign nationality should receive a special bonus with regard to the average grade of their final examination when they apply for study places. In the case of students from migrant worker families, affirmative action programs might be extremely helpful in order to overcome their specific difficulties.

## IV. Migrant Workers in the Federal Republic--Educational Problems of Their Children

The hope that migration movements in Western Europe from the "South" to the "North" can be treated exclusively in economic terms had to be given up during the course of the 1970s. The old formulas are no longer valid--in the North: decrease of manpower shortages and thereby continuation of economic growth; in the South: decrease of unemployment and underemployment; and within the long term: positive spillover effects for the South via returning migrants, and in the North, avoidance of social costs by applying the "rotation principle."

Although worldwide recession, inflation, and unemployment, combined with restrictive measures such as the Auslanderstopp of November 1973, whereby entry by visa into the Federal Republic of Germany for purposes of employment has been completely blocked, led to a decrease of the absolute number of migrant workers in the Federal Republic of Germany, severe follow-up problems remain unsolved; the German society, still claiming to be legally no "immigration country," is confronted with a long-term development process of integrating an increasing number of multicultural and multiethnic groups during the coming decades.

The Auslanderquote (proportion of foreign workers in the labor force) reached its first peak with 7 percent in 1966, went down for two years and then climbed up to almost 12 percent in 1972. Afterward, it showed decreases, but always remained over 10 percent.

In 1980, among the population resident in Germany, about 7.2 percent were foreigners. In addition to the actively 2.17 million employed people mentioned above there lived about 2.28 million non-active family members in Germany (including about 1.12 million children under 16 years of age of whom 581,000 [51.8 percent] were born in Germany).

The duration of stay of migrant workers increased dramatically. Whereas in 1973 only about 11 percent of them had come to Germany 10 years or more before, this percentage increased by 1980 to about 38 percent.[9] In 1973, more than half of the migrant workers stayed in Germany less than four years, in 1980 only about one-fifth.

The proportion of foreigners born in the Federal Republic of Germany increased from 1.2 in 1960 to 13 percent in 1980. This share reached its peak in 1974 with 17.3 percent. In absolute terms, this means that in 1960 about 11,000, in 1974 about 108,000, and in 1980 about 81,000, foreign children were born in Germany.

- The increased inflow of migrant workers and their families as well as the increased number of births of foreign children in the Federal Republic of Germany--combined with a dramatic decrease of German births between 1965 and 1975--had an immediate impact upon the educational system, especially at the elementary and primary level. The official statistics at the federal level do not offer detailed figures about the number of foreign children in kindergartens. In 1980, the federal government deplored that about 70 percent of foreign children (even 85 percent of the Turkish children) did not attend any institution of the elementary sector, although especially kindergartens could fulfill an important function in the social integration process of foreign children.

The number of all foreign pupils in general and vocational education increased dramatically during the 1970s. In 1970-71 there were about 180,000 foreign pupils in institutions of general and vocational

education, which corresponded to a foreign proportion of about 1.7 percent. In 1980-81, there were about 738,000 foreign pupils in those institutions, which means that the proportion of foreign pupils jumped up to about 6.3 percent within a decade. The largest proportion of foreign pupils came from the six "emigration countries" of migrant workers, namely, Greece, Italy, Spain, Portugal, Turkey, and Yugoslavia. Their share increased from 71.7 percent in 1970-71 to 86.5 percent in 1980-81. The by far largest group were Turkish pupils; their share increased from 22.4 percent in 1970-71 to 58 percent in 1980-81.

Government figures offer an overall picture about the development. The number of foreign pupils in primary schools and Hauptschulen increased from 138,000 in 1970-71 to about 523,000 in 1980-81. In 1980-81, 28,000 attended schools for the handicapped, 28,000 Realschulen, 59,000 Gymnasien and comprehensive schools, and over 100,000 vocational schools.

Looking upon the distribution of foreign pupils in general education, the share of Turkish pupils increased from 17 percent to almost 50 percent during that decade. The share of Yugoslav pupils increased from 7.6 percent to 10.2 percent, the share of pupils from Portugal from 1.2 percent to about 3 percent.

During the same time period, a relative decline could be observed for Greek pupils (from 16.6 percent to 8 percent), for Italian pupils (from 22 percent to 12 percent), and for Spanish pupils (from about 11 percent to 4 percent).[10]

Estimates about the nonattendance of foreign pupils varied especially at the beginning of the 1970s. At that time, one estimated that about 50 percent of those of compulsory school age did not attend any German school. Later on, one estimated that about 30 percent did not attend German schools, whereby also those were included who should attend vocational schools for one day per week. At this point, it should be mentioned that it is not very easy to make clear-cut statistical distinctions. This is especially due to the fact that foreign children under 16 years of age who enter the Federal Republic of Germany are not officially registered. Therefore, only by combination of different

information sources can some "proxy" estimates be made. But the situation did improve after the controlled coupling of children allowances and official attention certificates of those of compulsory school age was required.[11] However, at the federal level, no data are available about foreign pupils who are supposed to attend school, who enter the school system as beginners or at higher grades or who move abroad again. The same is true with regard to the number of foreign pupils who failed, who left the schools without a certificate, or who reached specific certificates within the German school system.

Some data from individual Lander show that the repetition ratios, especially at the lower grades, are very high among foreign pupils and that a very high proportion enter or leave school during the official school year, which implies a reduction of school attendance in the Federal Republic of Germany and reduces the chance of getting a graduation certificate.

In a recent study on children of workers in the German educational systems, the federal government also referred to children of migrant workers as belonging to the worker class. Based upon some regional evidence, the authors conclude that:

Educational chances of foreign children being born in Germany or having entered primary education from the beginning are about the same as those chances of German children of workers;

Educational chances of foreign children who entered Germany at a later stage are still extremely small;

Only about half of all foreign children leave school with a completion certificate; and

Only one-quarter of all foreigners of the part-time compulsory school age, between 15 and 18 years of age, receive a full vocational training or attend schools at the secondary II level.

An analysis of the educational policy reactions during the 1970s led to the conclusion that the political parties as well as the overall educational planning bodies KMK and BLK were extremely reluctant to discuss educational problems of the children of migrant workers. This is not surprising: on the one hand, migrant workers do not belong to the

voter potential, because they have no right to vote either at the Federal or at the Länder or community level. On the other hand, the educational policy consequences must always be seen in connection with the overall policy vis-à-vis migrant workers. In other words, educational measures can only be undertaken successfully if the overall problems with regard to the legal aspects of sojourn and work are solved; the German education system is per se not in the position of integrating the children of migrant workers into German society.

Within the context of this paper, it will be impossible to give any details about the implementation of administrative orders in the different Länder because, due to the cultural sovereignty of the Länder, the educational problems of the children of migrant workers are part of the Länder activities. We will concentrate here upon some administrative changes as they were laid down within the different recommendations of the KMK. Those were compromises--actions and reactions that were taken in view of the different situations in the Länder but also in the international environment. International pressure increased and should not be ignored. Besides the conventions within the framework of the United Nations System mentioned above, it should be noted that also the Final Act of Helsinki in 1975 dealt with the problem of foreign pupils. Furthermore, the Council of the European Communities became active in July 1977 and asked all member states to fulfill within a period of four years the following measures:

Introductory courses without fees that are adapted to the specific needs of the children and include teaching in the national language of the receiving state;

Training and further education of teachers who offer such a type of courses; and

Furthering of teaching the foreign children in their mother tongue and in civic education (the whole being coordinated with the overall education in German school institutions).

It should be mentioned again that the decisions of the KMK have the character of recommendations and therefore do not bind the individual

Lander. The problem is further complicated since there is not only the cultural sovereignty of the Lander, but there exist also diverging concepts with regard to an employment policy of foreigners in the different Lander that do not make it easier to solve the school problems of children of migrant workers. This is also clearly reflected in the different implementation measures of the Lander based upon recommendations of the KMK.

The KMK passed three recommendations in 1964, 1971, and 1976. Foreign pupils have the same rights and duties as German pupils with regard to full- and part-time compulsory school attendance until the age of 18. However, the double strategy of the KMK recommendations is rather ambivalent, if not impossible: on the one hand, foreign pupils should become part of the German education system so that they learn the German language, receive German graduation certificates, and are socially integrated "for the duration of their stay in the Federal Republic of Germany"; on the other, they are supposed to keep and improve the level of knowledge of their mother tongue and their cultural identity, which should allow them a reintegration into the education systems of their "countries of origin."

Preparatory classes were introduced in order to assist foreign pupils in learning the German language. Foreign pupils with a sufficient knowledge of German were supposed to enter normal classes; their proportion should not exceed 20 percent.

Although the idea of "national schools" for foreign students has been generally rejected, some Lander developed pilot projects that corresponded to a de facto realization of this idea. In some Lander, schooling in the mother tongue was left to the consulates of the "countries of origin."

Furthermore, it must be stressed that due to the density of foreigners in certain areas--especially in some districts of the big cities--the concept of integration according to the 20 percent clause could not always be implemented. However, as mentioned above, the educational authorities at the Lander or local level are forced to develop strategies of "muddling through" as long as the overall political and legal framework conditions are not clearly defined. The necessary consistent

measures cannot be undertaken unless a comprehensive concept of Auslanderpolitik is still missing.

Although several attempts were undertaken during the late 1970s, a lack of consensus between the federal government and the Lander governments still prevailed and led to a "nonpolicy" of immigration in the Federal Republic of Germany.

## V. Equality of Educational Opportunity: Specific Measures in the Federal Republic of Germany

There exist, as mentioned above, several possibilities of increasing the equality of educational opportunity, of implementing the right to education. In principle, three approaches can be distinguished, namely (1) political measures that lead to structural changes of the education system and/or to changes of the admission criteria for secondary and tertiary education, (2) public financial assistance schemes that support pupils and students from low-income groups, and (3) legal measures that further elaborate the rights to education.

The concept of "affirmative action," which goes along with such ideas as "positive discrimination" or "reverse discrimination," implies that one has to discriminate in order to equalize. So far, concrete affirmative action programs, being well known in the United States, do not exist in the Federal Republic of Germany. This does not mean that German policymakers are not unaware of latent and manifest discriminatory practices in education. But three reasons might help to explain possible differences between Germany and the United States:

1. One refers to structural differences in educational planning: the steering of educational systems in Germany is primarily not organized via "consumers" and "markets," but via highly centralized planning activities of the Lander.
2. The generally accepted welfare state notion in the Federal Republic of Germany ("social market economy") led to the establishment of a closely tied social network similar to other Western European countries and in contrast to the still rather

underdeveloped--or even rejected--one in the United States.

3. The minority problems, especially in the case of migrant workers, are not yet "visible," although they might occur--given the present economic constraints--in the very near future and lead to manifest conflicts.

The equality of educational opportunity discussion that took place in Germany during the 1960s centered mainly around the rather rigid German education system at the secondary level. It was argued that the particularly low participation rate of children from the working class was due mainly to the early selection processes after primary education. Therefore, the concept of the comprehensive school that allows for a greater "horizontal mobility" became the structural alternative. As mentioned above, the Gesamtschule did not replace the traditional system, which however changed in two ways: (a) the introduction of an "orientation level" weakened the former a priori streaming; and (b) the social demand for secondary education changed to such an extent that the Hauptschule is no longer the "main school" but a "residual school," which raises the question of abolishing it totally.[12] In turn, this also means that the Gymnasium of 1980 is no longer comparable with the Gymnasium of 1960. Therefore, the dichotomy of Gymnasium versus Gesamtschule must be given up in favor of a more differentiated analysis. In other words, further educational reform measures are necessary, but must be--due to the changes in enrollment ratios and participation rates--undertaken under a different focus.

Since 1972, pupils and students from low-income families can claim public financial support in order to continue education at the secondary II level and at the tertiary level. The Bundesausbildungsforderungsgesetz (BAfoG; federal law for furthering education) is based upon the principle of the social state (Article 20, 1 of the Grundgesetz) and is supposed to realize a de facto equality of life chances. Grants are offered to pupils, combined forms of grants and loans (to be repaid without interest charges) to students; the amount depends upon the net income of the parents.

In 1972, 225,000 pupils (31.3 percent of all pupils) received BAfoG grants; in 1980, the corresponding number of pupils was 490,000 (34.2 percent). In 1972, 270,000 students (44.6 percent of all students) received BAfoG grants/loans. In 1980, the corresponding number of students was 345,000 (35.6 percent).

Total expenditure of this scheme increased from 1.6 billion DM in 1972 to 3.7 billion DM in 1980. The scheme is financed by the Bund (65 percent) and the Lander (35 percent); it offers the federal government a "market-oriented," consumer-oriented strategy of intervention in matters of educational policy.

Although the data are incomplete, the general picture is obvious: in 1979, more than 30 percent of the BAfoG recipients came from the working class. Finally, it should be mentioned that foreign pupils and students also can apply for BAfoG grants/loans. However, the administrative regulations are rather complicated: whereas children with EC nationality (Italians and Greeks) have the same claims as Germans, the possibility of financial assistance for other foreigners depends upon the duration of stay (in the case of pupils, at least one of the parents must have been employed in Germany during the preceding three years). In 1979, 13,000 foreigners received BAfoG grants/loans (out of 770,000 recipients altogether). This percentage of 1.7 in 1979 was supposed to increase since the majority of the foreign pupils did not yet--due to the age composition--enter the secondary II level. However, in November 1982, the new federal government announced drastic changes of the BAfoG scheme. In the case of pupils, only those who must live outside their family homes can claim BAfoG grants. Since in 1982 only 15 percent did not live with their parents, it can be assumed that the BAfoG scheme will be practically abolished for pupils at the secondary II level.

In the case of students, the old combined BAfoG scheme of grants and loans will be changed into a pure loan scheme. The consequences are obvious: many students, especially from the lowest income groups, will be reluctant to assume a long-term debt in order to finance their

education, which will negatively influence the proclaimed equality-of-educational-opportunity goal of the 1960s and 1970s.

Although slogans such as "equality of educational opportunity" and "education as a civil right" played a significant role during the "decade of educational reform" (1965-75) in the Federal Republic of Germany, the political meaning of basic rights to education still remained rather limited. In constitutional-legal terms, those slogans did not lead to a process of concrete codification of basic rights to education as social rights, although "external pressure" increased--due to the international codification of human rights instruments, most of which were ratified by the Federal Republic of Germany. In practical-financial terms, a dramatic backlash can be anticipated due to the announced changes of the BAfoG scheme.

Today, the Federal Republic of Germany is a de facto country of immigration where the majority of migrant workers and their families will stay permanently. This requires that the social rights as laid down and/or practiced to the benefit of Germans must also be applied to foreigners. Basic rights to education must at least be formulated as basic norms and applied to all inhabitants, to Germans and non-Germans. This requires educational reform measures in terms of a more pluralistic and differentiated educational system, which should offer educational paths according to different individual needs and include the right of participation in all decision-making processes within the educational institutions.

Rist mentioned that "it is noteworthy that nowhere in the current discussions about the educational future of the foreign workers' children does one come across the concept of affirmative action" (p. 237). Some of the reasons for it were explained above. If the present federal government intends to apply more market-oriented schemes in educational finance, then affirmative action programs are even more urgent than before--because the present position of nonrecognition of the de facto immigration situation in Germany can no longer be held, and the built-in disadvantages of educating foreign children as "illiterates in two languages" must be removed through special programs in favor of them.

## NOTES

1. The notion of planning is, of course, restricted to programming (preparation of plans).

2. Attendance at part-time vocational schools is compulsory until the age of 18.

3. Georg Picht. Die deutsche Bildungskatastrophe. Analysen und Dokumentation. Olten-Freiburg, Walter Verlag, 1964.

4. Ralf Dahrendorf. Bildung ist Burgerrecht. Pladoyer fur eine aktive Bildungspolitick. Hamburg, Nannen, 1965.

5. The Federal Republic of Germany became party to both Covenants, but not party to the Optional Protocol. This implies that citizens of the Federal Republic of Germany cannot submit "written communications" to the Human Rights Committee. The Federal Republic of Germany made, however, the necessary declaration under Article 41 with regard to the procedure for inner-state complaints--a procedure that provides for a complaint by one state party that another state party "is not fulfilling its obligations under the present Covenant."

6. The Federal Republic of Germany became party to this Convention, which came into force on May 22, 1962, and to the recommendation.

7. Under Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, States Parties (including the Federal Republic of Germany) undertake to prohibit and to eliminate racial discrimination with respect to the right to education.

8. All figures are from: Bundesminister fur Bildung und Wissenschaft. Grund- und Struktur-Daten 1981/82. Bonn, BMBW, November 1981.

9. This duration of stay is necessary in order to become a citizen of the Federal Republic of Germany. In 1979, about 35,000 foreigners became Germans. However, 25,000 of them came from Eastern European countries such as Rumania, the Soviet Union, Czechoslovakia, Poland, and Hungary. With the exception of Yugoslavia (about 4,000), only a very small number of persons from the "South" became Germans, namely, 340 Greeks, 951 Italians, 225 Spaniards, and 312 Turks.

10. In absolute figures, however, also in the case of these three nationalities, increases occurred (e.g., in the case of Greek pupils, from 26,500 to almost 51,000 during that period).

11. According to a recent survey, 8 percent of all foreign children of compulsory school age did not attend school. Among all Turkish children, the percentage reached almost 18 percent.

12. Because there is obviously the danger that the Hauptschule becomes primarily the school of the children of migrant workers.

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